

REMARKS

This Application has been carefully reviewed in light of the Advisory Action mailed October 17, 2006. Claims 1, 2, 4, 5, 8, 10, 11, 13-16, and 18-20 are pending in this application with Claims 6, 7, and 9 being withdrawn. In order to advance prosecution of this Application, Claims 1, 11, and 16 have been amended and Claims 2, 4, 10, 13, and 18 have been canceled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this Application.

The Examiner issued a Final Action on August 7, 2006. Applicant submitted a Response to Examiner's Final Action on October 6, 2006. The Examiner issued an Advisory Action on October 17, 2006 stating that the Response to Examiner's Final Action would not be entered because it raised new issues requiring further searching and consideration. Applicant respectfully requests continued examination of this Application so that the Response to Examiner's Final Action can be entered and considered by the Examiner pursuant to this Request for Continued Examination. For the convenience of the Examiner, the amendments made to the claims in the Response to Examiner's Final Action and the accompanying comments are repeated herein.

The drawings stand objected to under 37 C.F.R. §1.83(a) as not showing every feature of the invention specified in the claims. FIGURE 14 has been amended to show the midsole described in the specification but missing from the drawings. Support for the amendment to the drawings to show the midsole can be found at page 29, lines 11-13, of Applicant's specification. Further support for a midsole can be found at page 22, lines 9-12, of Applicant's specification. The Examiner indicates that the thickness, shape, and exact

location of the midsole added to FIGURE 14 is considered to be new matter. Applicant respectfully submits that these features are disclosed in Applicant's specification and no new matter has been added as a result of showing the midsole in the drawings. As cited above, Applicant's specification clearly states that midsoles may be included in the shoe and thus has some thickness, its location may be between an insole and an outsole, and its shape may have substantially planar surfaces. The midsole now shown in FIGURE 14 provides these features. Moreover, midsoles are well known by those of skill in the art as shown in the various prior art documents submitted by Applicant and cited by the Examiner and as taken by the Examiner as Official Notice in the Office Action. No unusual features have been attributed to the midsole provided in FIGURE 14 and described in Applicant's specification. Therefore, Applicant respectfully submits that the amended drawings are in accordance with 37 C.F.R. §1.83(a).

The Examiner continues to object to the drawings as not showing reference numeral 824 at a substantially halfway point of the shoe. FIGURE 14 has been amended to clearly show that reference numeral 824 coincides with the midpoint of the length of shoe 810 as provided in Applicant's specification at page 29, lines 16-20, therein.

The Examiner has requested a Replacement Sheet correcting the above identified errors. Applicant has provided the Examiner with an appropriate Replacement Sheet pursuant to the Examiner's request. Therefore, Applicant respectfully submits that the drawings are in accordance with 37 C.F.R. §1.83(a).

Claims 2 and 10 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 2 and 10 have been canceled without prejudice or disclaimer.

Claims 1, 2, 4, 5, 10, 11, and 13 stand rejected under 35 U.S.C. §102(b) as being anticipated by Snabb, et al. Independent Claims 1 and 11 have been amended to include the features of respective Claims 4 and 13. Claims 2, 4, 10, and 13 have been canceled without prejudice or disclaimer. Independent Claims 1 and 11 recite in general an insole being configured with a constantly thick forward toe section and a decreasingly thick rear heel section with the constantly thick forward section meeting the decreasingly thick rear heel section at a substantially halfway point of the upper or outsole of the shoe. By contrast, the Snabb, et al. patent clearly states that its forward toe section does not have a constant thickness until location 29. Location 29 is hardly at a halfway point with respect to the shoe upper or outsole as required by the claimed invention. Moreover, the Snabb, et al. patent clearly teaches away from this feature at col. 2, lines 34-37, thereof. Thus, the Snabb, et al. patent fails to teach each and every limitation of the claimed invention as required to support an anticipation rejection. Therefore, Applicant respectfully submits that Claims 1, 5, and 11 are not anticipated by the Snabb, et al. patent.

Claims 8, 14, and 16, and 18-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. Claim 17 has been canceled without prejudice or disclaimer. Independent Claim 1, from which Claim 8 depends, and Independent Claim 11, from which Claim 14 depends has been shown above to be patentably distinct from the Snabb, et al. patent. Independent Claim 16 has been amended to include the similar features of Claim 18 shown above to be patentably distinct from the Snabb, et al. patent. Claim 18 has been canceled without prejudice or disclaimer. Therefore,

Applicant respectfully submits that Claims 8, 14, 16, 19, and 20 are patentably distinct from the Snabb, et al. patent.

Claims 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Snabb, et al. in view of Borgeas. Independent Claim 11, from which Claim 15 depends, has been shown above to be patentably distinct from the Snabb, et al. patent. Moreover, the Borgeas patent does not include any additional disclosure combinable with the Snabb, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 15 is patentably distinct from the proposed Snabb, et al. - Borgeas combination.

Please charge Deposit Account No. 02-0384 of BAKER BOTTS L.L.P. an amount of \$395.00 to satisfy the request for continued examination fee of 37 C.F.R. §1.17(e).

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If there are matters that can be discussed by telephone to advance prosecution of this Application, Applicant invites the Examiner to contact the undersigned attorney at the number provided below.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over a horizontal line.

Charles S. Fish

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